SBCivil Writ Petition No.5106/2006

Management Committee, Shri Sumer Pushtikar Secondary School, Jodhpur
Vs.
Civil Judge (JD)-cum-Judicial Magistrate, Jodhpur and another.

Date of Order :: 12th September, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Rakesh Kalla, for the petitioner.

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The Rajasthan Non Government Educational Institutions Tribunal, Jaipur by its judgment dated 21.12.2002 accepted an application under Section 21 of the Rajasthan Non Government Educational Institutions Act, 1989 (hereinafter referred to as “the Act of 1989”) preferred by respondent Shri Kailash Chand Harsh by directing the petitioner to make payment of gratuity with interest @ 9% per annum, to make the payment of due wages by making fixation of the salary in the revised pay scales and also make cash payment for earned leaves to the applicant. A writ petition giving challenge to the judgment dated 21.12.2002 came to be rejected by this Court on 17.8.2005.

Shri Kailash Chand Harsh preferred an application to initiate execution proceedings to execute the judgment dated 21.12.2002 before the Civil Judge (JD) Jodhpur City, Jodhpur. The petitioner submitted an application before the executing court

under Section 151 CPC with a prayer not to proceed with the execution proceedings being lacking jurisdiction as Section 27-A of the Act of 1989 giving jurisdiction to civil courts for executing judgment of Non Government Educational Institutions Tribunal came into force on 7.4.2003 that is after pronouncement of the judgment dated 21.12.2002 and being so it cannot be executed under Section 27-A of the Act of 1989.

Learned executing court by its order dated 11.8.2006 dismissed the application holding therein that the application to execute the judgment dated 21.12.2002 was filed on 8.8.2003 and as such the court is competent enough to execute the judgment dated 21.12.2002. Being aggrieved by the same, the instant petition for writ is preferred by the petitioner before this Court.

It is true that provisions for executing an order of the Tribunal was introduced in the Act of 1989 on 7.4.2003, however, it nowhere restricts powers of the civil court to execute an order passed prior to 7.4.2003. The powers of executing the directions given under Section 27-A of the Act of 1989 are made with a view to make a remedy provided under the Act of 1989 workable. No interpretation of a statute can be made to make it non functional. The execution proceedings initiated by Shri Kailash Chand Harsh are to give effect to the judgment dated 21.12.2002 and the

application in this regard was filed on 8.8.2003 i.e. after 7.4.2003. The civil court on that day was competent to execute the order passed by the Tribunal. I do not find any error in the order impugned holding that the application for execution being filed on 8.8.2003, the court was having jurisdiction to initiate execution proceedings, therefore, the order impugned does not suffer from any vice that may warrant interference of this Court under Article 227 of the Constitution of India.

Accordingly, this petition for writ is dismissed.

(GOVIND MATHUR),J.

kkm/ps.